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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **C.W.P. No. 11390 of 2000**
Date of decision: 29.10.2007

M/s Bhupindra Gram Udyog Samiti (Regd.),
Village and Post Office, Sangatpur **...Petitioner**

Versus

State of Punjab and another

...Respondents

2. **C.W.P. No. 11391 of 2000**

M/s The Parmar Gram Udyog Samiti (Regd.),
Khalifa Bagh, Dhuri Road, Sangrur

...Petitioner

Versus

State of Punjab and another

...Respondents

3. **C.W.P. No. 11392 of 2000**

M/s Shiv Shakti Gram Udyog Samiti (Regd.),
village Lalluana Road, Mansa

...Petitioner

Versus

State of Punjab and another **...Respondents**

4. **C.W.P. No. 11393 of 2000**

M/s The Bansal Gram Udyog Samiti (Regd.),
Mubarak Mehal Colony, Sangrur

...Petitioner

Versus

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State of Punjab and another **...Respondents**

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5. **C.W.P. No. 11394 of 2000**

M/s J.K. Gram Udyog Samiti (Regd.),
village Haraj

...Petitioner

Versus

State of Punjab and another

...Respondents

6. **C.W.P. No. 11395 of 2000**

M/s The Balwant Gram Udyog Samiti (Regd.),
Village and Post Office Sangatpura **...Petitioner**

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

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Present: Mr. P.C.Dhiman, Advocate for the petitioners
in C.W.P. Nos. 11390, 11392, 11394 & 11395 of 2000

Mr. Suvineet Sharma, Advocate for the petitioners
in C.W.P. Nos. 11391 and 11393 of 2000.

Mr. Ram Lal Gupta, Additional Advocate General, Punjab
for respondent No.1.

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RAJESH BINDAL, J.

This order will dispose of bunch of cases bearing Civil Writ Petition Nos. 11390 to 11395 of 2000 as common questions of law and facts are involved.

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The facts are extracted from Civil Writ Petition No. 11390 of 2000.

Challenge in the present petitions is to the notice dated June 09, 1999 (Annexure P-7) whereby margin money given to the petitioner was sought to be converted into loan and consent of the petitioner was sought for the same, so as to enable respondent no.2 to consider issuance of genuineness certificate to the petitioner.

The pleaded facts are that the petitioner is a "Samiti" registered under the Cooperative Societies Act, which had set up brick kiln after obtaining licence from the District Food and Supplies Controller, Moga. The Punjab Khadi & Village Industries Board, Chandigarh (for short "the Board") framed Rules named as the Punjab Khadi & Village Industries Loan Rules, 1958 (for short "the Rules"). The same came into force with effect from April 1, 1958. In terms of Rule 4 of the Rules, the loans and grants could be advanced by the Board for the purpose of capital expenditure, working capital and share capital, loans for capital formation to registered institutions etc. The cooperative society is eligible in terms of Rule 5 of the Rules for obtaining loan. In terms of Rule 9 of the Rules, margin money subsidy was also available to the loanee to the extent of 25% upto Rs. 10 lacs and 10% on the loan exceeding Rs. 10 lacs to Rs. 25 lacs. Initially the subsidy amount was to be released as interest free loan and after successfully working and repayment of loan, it was to be adjusted as margin money subsidy.

The relevant Rule is extracted below:-

> "MARGIN MONEY SUBSIDY
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> Margin Money Subsidy @ 25% upto Rs. 10.00 lacs and 10% on the loan exceeding Rs. 10.00 lacs to 25.00 lacs, will be provided to the loanee. Initially, the subsidy amount would be released as interest free loan and after successfully working and repayment of loan it will be adjusted as margin money subsidy."

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In terms of Rules, the petitioner was sanctioned a loan of Rs. 10 lacs as working capital, which was conveyed to the petitioner vide letter dated March 19, 1997 (Annexure P-2). It is specifically mentioned in the letter of sanction that the loan comprised of margin money of Rs. 2.50 lacs and loan of Rs., 7.50 lacs. Thereafter, on March 20, 1997, an agreement
(Annexure P-3) was signed between the parties, which again provided working capital loan of Rs. 7.50 lacs and margin money subsidy of Rs. 2.50 lacs. Thereafter vide communication dated March 31, 1997 (Annexure P-4), the petitioner was sent a cheque of Rs. 10 lacs mentioning the detail in the same manner regarding working capital loan and the margin money. Even the calculation sheet attached with this communication mentioned repayment schedule of Rs. 7.50 lacs alongwith interest thereon. Still further, petitioner was issued genuineness certificate for the period from April 1, 1999 to March 31, 2000. The dispute in the present case arose with the issuance of communication dated June 09, 1999 (Annexure P-7) by respondent no. 2-Board to the petitioner mentioning that as per policy of the Khadi Commission, the working capital cannot be given to the Samitis/ Individuals and the cases where it has been sanctioned, margin money cannot be deemed to have validly given and therefore, the same was sought to be converted into loan.

In the written statement filed by the respondent-Board, the stand is that the respondent Board has been established under Punjab Khadi and Village Industries Commission Act, 1955. The Board gets grants and funds from Khadi and Village Industries Commission established under Section 4 of the Khadi and Village Industries Commission Act, 1956. The loans and grants are advanced by the Board for capital expenditure i.e. for construction of factory building/shed, purchase of machinery and implements as well as for working capital requirements. However, as per policy of the Board and the directives and guidelines of the Commission if the loan is sought for capital expenditure and working capital requirements

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then only margin money (subsidy) can be availed of by the Samiti/Entrepreneur. However, if the loan is sanctioned only for the working capital requirements, then no margin money (subsidy) is available. In such a situation the entire working capital loan attracts repayment of loan with interest. In the present case, petitioner applied only for working capital loan and accordingly as per the scheme/guidelines, it was not entitled to any margin money (subsidy).

However, the factum that the petitioner had been sanctioned working capital loan including margin money is not denied. All what has been stated is that the same was against the scheme/guidelines of the Commission. The mistake came to the notice of the Board, when it was pointed out by the Commission vide communication dated July 30, 1996.

I have heard learned counsels for the parties and with their assistance perused the paper book.

The primary contention raised by learned counsels for the petitioners is that action of the respondent Board is barred by principle of promissory estoppel. The petitioners relying upon the promise made by the respondent Board had spent huge amount for establishment of the Brick Kiln and after setting up of the Brick Kiln, the promise was converted into sanction of loan to the petitioners, clearly mentioning the margin money (subsidy) which as per the sanction was released to the loanees as interest free loan. There was no occasion for the respondent Board to turn around and take a stand that margin money (subsidy) in the form of interest free loan should now be converted into interest bearing loan merely because according to Board some error had been committed by them.

Learned counsel for the petitioners state that the petitioners have already repaid the loan element alongwith interest within the stipulated time and there is no default as such.

Hon'ble the Supreme Court traced the history of doctrine of promissory estoppel in **Mahabir Vegetable Oils (P) Ltd. and another Vs. State of Haryana and others** (**2006) 3 Supreme Court Cases 620** and

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opined as under:-

25. It is beyond any cavil that the doctrine of promissory estoppel operates even in the legislative field. Whereas in England the development and growth of promissory estoppel can be traced from *Central London Property Trust Ltd. V. High Trees House Ltd.* in India the same can be traced from the decision of this Court in *Collector of Bombay V. Municipal Corpn. Of the City of Bomaby.* In that case the Government made a grant of land (which did not fulfil requisite statutory formalities) rent free. It, however, claimed rent after 70 years. The Government, it was opined, could not do so as they were estopped. It was further held therein that there was no overriding public interest which would make it inequitable to enforce estoppel against the State as it was well within the power of the State to grant such exemption.

26. In *Motilal Padampat Sugar Mills Co. Ltd. V. State of U.P.* this Court rejected the plea of the State to the effect that in the absence of any notification issued under Section 4-A of the U.P. Sales Tax Act, the State was entitled to enforce the liability to sales tax imposed on the petitioners thereof under the provisions of the Sales Tax Act and there could be no promissory estoppel against the State so as to inhibit it from formulating and implementing its policy in public interest.

27. The question came up for consideration before this Court in *Pournami Oil Mills V. State of Kerala* wherein it was held :(SCC p. 732, para 7)

> "Under the order dated 11.4.1979, new small-scale units were invited to set up their industries in the State of Kerala and with a view to boosting of

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industrialisation, exemption from sales tax and purchase tax for a period of five years was extended as a concession and the five-year period was to run from the date of commencement of production. If in response to such an order and in consideration of the concession made available, promoters of any small-scale concern have set up their industries within the State of Kerala, they would certainly be entitled to plead the rule of estoppel in their favour when the State of Kerala purports to act differently. Several decisions of this Court were cited in support of the stand of the appellants that in similar circumstances the plea of estoppel can be and has been applied and the leading authority on this point is the case of *M.P.Sugar Mills.* On the other hand, reliance has been placed on behalf of the State on a judgment of this Court in *Bakul Cashew Co. V. STO*. In *Bakul Cashew Co. case* this Court found that there was no clear material to show that any definite or certain promise had been made by the Minister to the persons concerned and there was no clear material also in support of the stand that the parties had altered their position by acting upon the representations and suffered any prejudice. On facts, therefore, no case for raising the plea of estoppel was held to have been made out. This Court proceeded on the footing that the notification granting exemption retrospectively was not in accordance with Section 10 of the State Sales Tax Act as it then stood, as there was no

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power to grant exemption retrospectively. By an amendment that power has been subsequently conferred. In these appeals there is no question of retrospective exemption. We also find that no reference was made by the High Court to the decision in *M.P.Sugar Mills case*. In our view, to the facts of the present case, the ratio of *M.P.Sugar Mills case* directly applies and the plea of estoppel is unanswerable."

28. Yet again in *CCT V. Dharmendra Trading Co.* this Court, on the fact situation obtaining therein, rejected the contention of the State that any misuse was committed by the respondent therein and thus the State cannot go back on its promise.

29. It was observed : (SCC p.573, para 5)

"5. The next submission of learned counsel for the appellants was that the concessions granted by the said order dated 30-6-1969 were of no legal effect as there is no statutory provision under which such concessions could be granted and the order of 30-6-1969 was ultra vires and bad in law. We totally fail to see how an Assistant Commissioner or Deputy Commissioner of Sales Tax who are functionaries of a State can say that a concession granted by the State itself was beyond the powers of the State or how the State can say so either. Moreover, if the said argument of learned counsel is correct, the result would be that even the second order of 12-1-1977 would be equally invalid as it also grants concessions by way of refunds, although in a more limited manner and

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that is not even the case of the appellants."

30. *Mangalore Chemicals and Fertilisers Ltd. Vs. Dy. CCT* is a case where this Court had the occasion to consider as to whether subsequent change in the eligibility criteria can undo the eligibility for the condition stipulated in the earlier notification and answered the same in the negative.

31. This Court reaffirmed the legal position in *Pawan Alloys & Casting (P) Ltd. V. U.P.S.E.B.* Holding :(SCC p. 294 para 62)

> "62. As a result of the aforesaid discussion on these points the conclusion becomes inevitable that the appellants are entitled to succeed. It must be held that the impugned notification of 31-7-1986 will have no adverse effect on the right of the appellant new industries to get the development rebate of 10% for the unexpired period of three years from the respective dates of commencement of electricity supply at their units from the Board with effect from 1-8/1986 onwards till the entire three years' period for each of them got exhausted. This result logically follows for the appellants who have admittedly entered into supply agreements with the Board as new industries prior to 1-8-1986."

32. The question came up for consideration before this Court recently in *State of Punjab V. Nestle India Ltd.* wherein this Court surveyed the growth of the said doctrine.

33. In that case the State, pursuant to its promise, did not issue any notification. The High Court, in the writ petition filed by the respondent therein was of the

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opinion that the State was bound by its promise to abolish purchase tax and as the respondent acted on the representation made, absence of a formal notification which was no more than a ministerial act would not make the respondents therein to pay purchase tax with effect from 1-4-1996 to 3-6-1997.

34. The learned counsel appearing on behalf of the State, however, has placed strong reliance on the judment of this court in *State of Rajasthan V. J.K. Udaipur Udyog Ltd.* wherein the question which fell for consideration was as to whether in the absence of any specific promise, the scheme of grant of exemption of sales tax payable by all the existing units as also the new industrial units would constitute a promise. It was held : (SCC p. 689, para 26)

> "26. In this case the Scheme being notified under the power in the State Government to grant exemptions both under Section 15 of the RST Act and Section 8(5) of the CST Act in the public interest, the State Government was competent to modify or revoke the grant for the same reason. *Thus what is granted can be withdrawn unless the Government is precluded from doing so on the ground of promissory estoppel, which principle is itself subject to considerations of equity and public interest.* (See *STO V. Shree Durga Oil Mills.)* The vesting of a defeasible right is, therefore, a contradiction in terms. There being no indefeasible right to the continued grant of an exemption (absent the exception of promissory estoppel), the question of the respondent

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Companies having an indefeasible right to any facet of such exemption such as the rate, period, etc. does not arise.

35. The said decision itself is an authority for the proposition that what is granted can be withdrawn by the Government except in the case where the doctrine of promissory estoppel applies. The said decision is also an authority for the proposition that the promissory estoppel operates on equity and public interest.

36. In *Bannari Amman Sugars Ltd. V. CTO* it was stated : (SCC p. 637, para 19).

> "19. In order to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. The Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present in the mind of the Court."

The same view followed by Hon'ble the Supreme Court in **MRF Ltd., Kottayam Vs. Asstt. Commissioner (Assessment) Sales Tax and Others (2006) 8 Supreme Court Cases 702.**

In the case in hand, it was not mere promise rather as per scheme of the respondent Board, the petitioner was sanctioned loan and the

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margin money (subsidy) on which, as per the terms of the sanction letter and the agreement signed between the parties, no interest was required to be paid. As per the sanction letter, the installments for repayment of loan were made only to the extent of 75% of the sum advanced the balance being margin money (subsidy). The petitioner being small entrepreneur, acting on promise made by the respondent Board set up the Brick Kiln keeping in view the fact that subsidy of 25% of the loan amount will be available to it. In case at a later stage the respondent Board is allowed to retrieve its steps and claim that there was some error in the process of sanction that would certainly be not equitable and the respondent Board cannot be permitted to back out of the promise made by it in the form of Rules and also by subsequent action of sanction of loan and margin money (subsidy).

Accordingly, the impugned communication dated June 9, 1999 (Annexure P-7) requiring the petitioner to give consent for conversion of margin money (subsidy) into interest bearing loan is set aside and respondents are directed to take further action with regard to the claim of the petitioner for issuance of genuineness certificate in accordance with law.

However, the entitlement of margin money subsidy shall be subject to the conditions as already specified in the Rules/sanction letter regarding repayment of the loan amount and the interest thereon as per schedule.

The writ petitions are disposed of in the manner indicated above.

October 29 , 2007 **(Rajesh Bindal)**
Pka/DK **Judge**

(Refer to reporter)